

Chow et al.
Docket No. 17243CIP3(AP)
Filed: March 21, 2001)

## **COMBINED DECLARATION & POWER OF ATTORNEY - U.S.A Application**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name.

I believe I am the original and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention COMPOUNDS AND METHODS FOR TREATING PAIN AND INTRAOCULAR HYPERTENSION WITH REDUCED SIDE EFFECTS the specification of which

(check one)	[X]	is attached h	iereto					
	[]	was filed on		as US App	plication !	Serial No.	·	_
		or PCT Inter	national	Applicatio	n No			
		and was ame	ended on		_ (if app	licable)		
I hereby state specification, includin		I have reviewe aims, as amene						re-identified
I acknowledge application in accorda priority benefits unde inventor's certificate, country other than tapplication for patent before that of the Prio	nce with r 35 U or §365 he Uni or inve	JSC § 119(a)-(o b(a) of any PCI ted States, lise entor's certifica	le of Fede d) or §36 l' Interna sted belo ste, or PC	ral Regula 5(b) of an tional app w and ha	ations, §1. ly foreign lication v lve also i	.56(a). I h applicat which desi dentified	nereby cl ion(s) fo ignated below	laim foreign or patent or at least one any foreign
Number		Country	Day/M	onth/Yr filed	)	[ ] Priority Not	Claimed	
I hereby clair application(s) listed be		benefit under	35 US	C §119 (e	e) of any	/ United	States	provisional

I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application(s) in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

 09/329,752
 June 6, 1999

 Application No.
 Filing Date

 09/205,597
 December 4, 1998

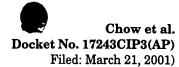
 Application No.
 Filing Date

 08/895,347
 December 4, 1997

 Application No.
 Filing Date

Application No.

Filing Date



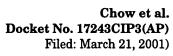
I hereby appoint CARLOS A. FISHER, Registration No. 36,510 (to whom all communications are to be directed), and the below-named persons (of the same address) individually and collectively my attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith and with the resulting patent, with full power to appoint associate attorneys:

Name	Registration No.
Robert Baran	25,806
Stephen Donovan	33,433
Martin A. Voet	25,208

, all of the following correspondence address: Allergan, Inc., 2525 Dupont Drive, Irvine, CA. 92612

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

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FULL NAME OF INVENTOR:						
First Name:		Initial	Last Na			
KEN			CHOV	V		
<b>RESIDENCE &amp; CITIZENSHIP</b>	)			, , , , , ,		
City	State or	Foreign Country		Country of Citizenship		
NEWPORT COAST	CALIFORNIA			USA		
POST OFFICE ADDRESS						
Post Office Address	City		State or Country		Zip Code	
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	COAS	ST	CALIFORNIA 192007			
SIGNATURE OF FIRST INVENT		DATE:		•		
Ousiqued						



<b>FULL NAME OF INVENTOR:</b>		_				
First Name:	Initial	Last Name				
DANIEL	W.	GIL				
RESIDENCE & CITIZENSHIP						
•		r Foreign Country FORNIA		Country of Citizenship USA		
POST OFFICE ADDRESS						
Post Office Address 2541 POINT DEL MAR	City CORONA DEL MAR				Zip Code 92625	
SIGNATURE OF INVENTOR			DATE:			
vusiqued						
FULL NAME OF INVENTOR:						
First Name:		Initial	Last Na	me		

FULL NAME OF INVENTO	R:			
First Name:	Initial	Last N	Last Name	
JAMES	A.	BUR	BURKE	
RESIDENCE & CITIZENSH	IP			
City	State or Foreign Cou	ıntry	Country of Citizenship	
Santa Ana	CALIFORNIA		USA	
POST OFFICE ADDRESS	•			
Post Office Address	City	State o	r Country	Zip Code
2409 East Avalon Ave.	Santa Ana	CAL	FORNIA	92705
SIGNATURE OF INVENTOR				•
Unsign	ed			
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V				•

FULL NAME OF INVENTOR:					
First Name:		Initial	Last Name		
DALE		Α.	HAR		
<b>RESIDENCE &amp; CITIZENSHIP</b>					
City	State or	Foreign Country		Country of Citizenship	
SAN CLEMENTE	CALIFORNA			USA	
_		_			
POST OFFICE ADDRESS					
Post Office Address	CITY		STATE	OR COUNTRY	Zip Code
320 E. AVENIDA	SAN CLEMENTE		CALIFORNIA		92672
CORDOBA					
SIGNATURE OF INVENTOR			DATE:		
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Filed: March 21, 2001)

<b>FULL NAME OF INVENTOR:</b>				
First Name:	Initial	Last Name		
MICHAEL	E.	GAR	ST	
<b>RESIDENCE &amp; CITIZENSHIP</b>				
City	State or Foreign Country	ntry Country of Citizenship		
NEWPORT BEACH	CALIFORNA		USA	
POST OFFICE ADDRESS				
Post Office Address	City	State or Country		
2627 REQUETA	NEWPORT	CALIFORNIA		
	BEACH	92660		
SIGNATURE OF INVENTOR	2	DATE:		
Jusign	eà			
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FULL NAME OF INVENTOR:					
First Name:		Initial	Last Na		
WHEELER		Α.	LARRY		
<b>RESIDENCE &amp; CITIZENSHIP</b>		•			
City	State or	Foreign Country		Country of Citizenship	
IRVINE	CALI	FORNIA		USA	
POST OFFICE ADDRESS					
Post Office Address	City		State or	Country	Zip Code
18 VALLEY VIEW	IRVINE		CA		92715
SIGNATURE OF INVENTOR					
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## 37 CFR § 1.56 Duty to Disclose Information Material to Patentability.

A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by Section Section 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

Prior art cited in search reports of a foreign patent office in a counterpart application, and

The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

It refutes, or is inconsistent with, a position the applicant takes in:

Opposing an argument of unpatentability relied on by the Office, or

Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

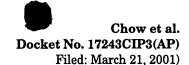
Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

Each inventor named in the application;

Each attorney or agent who prepares or prosecutes the application; and

Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.



## 35 USC § 102. Conditions for Patentability; Novelty and Loss of Right to Pat nt

A person shall be entitled to a patent unless -

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States, or
- (c) he has abandoned the invention, or
- (d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States, or
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent, or
- (f) he did not himself invent the subject matter sought to be patented, or
- (g) before the applicant's invention thereof the invention was made in this country by another who had not abandoned, suppressed, or concealed it. In determining priority of invention there shall be considered not only the respective dates of conception and reduction to practice of the invention, but also the reasonable diligence of one who was first to conceive and last to reduce to practice, from a time prior to conception by the other.

## 35 USC § 103. Conditions for Patentability; Non-obvious Subject Matter

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- (b)
  (1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if -
  - (A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and
  - (B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.
  - (2) A patent issued on a process under paragraph (1) -
  - (A) shall also contain the claims to the composition of matter used in or made by that process, or
  - (B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.
  - (3) For purposes of paragraph (1), the term "biotechnological process" means -
  - (A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to (i) express an exogenous nucleotide sequence,
    - (ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or
  - (iii) express a specific physiological characteristic not naturally associated with said organism;
  - (B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

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(C) a method of using a product produced by a process defined by subparagraph (A) or (B), or a combination of subparagraphs (A) and (B).